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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/382,275	08/25/1999	ROBERT A. VAN TASSEL	MEDIV1120-1	5006

7590 04/24/2002  
Oppenheimer Wolff & Donnelly LLP  
840 Newport Center Drive, Suite 700  
Newport Beach, CA 92660

EXAMINER

PHAN, HIEU

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 04/24/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/382,275

Applicant(s)

VAN TASSEL ET AL. *CA*

Examiner

Hieu Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-81 is/are pending in the application.
- 4a) Of the above claim(s) 3-29, 31-42, 46-57, 65-72 and 76-81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 30, 43-45, 58-64 and 73-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Election/Restriction***

1. Applicant's election of Specie 14, claims 1, 2, 30, 43-45, 58-64 and 73-75, in Paper No. 11 is acknowledged. Applicant also acknowledge that claims 1 and 58 are generic to all species in Paper No. 9. Non-elected claims 3-29, 31-42, 46-57, 65-72 and 76-81 have been withdrawn from consideration.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1, 2, 30, 43-45, 58-64 and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Yan (U.S. Patent 5,843,172).

4. Yan discloses a porous medicated stnet (14) having pores (18, 26) adapted to promote an organized growth pattern of infiltrating cells, such as endothelial cells as is claimed (Abstract, column 1 lines 12-20 and 62-67, column 2 lines 1-38, column 4 lines 12-31, column 5 lines 1-28 and column 6 lines 52-60).

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5. Claims 1, 2, 30, 43-45, 58-64 and 73-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Behl (U.S. Patent 5,078,736).

Behl discloses a stent (10) with the method of implanting into the tubular organ of the subject an implantable stent body; adapted to encourage ingrowth of live cells from the surrounding tubular body organ and being further adapted for transcutaneously heating the stent body following implantation thereof; transcutaneously heating the stent body to a temperature above normal body temperature that is not lethal to the ingrowing cells to cause the living cells to up regulate production of substances that promote formation of normal intima within the stent, thereby modifying the growth pattern of cells within the stent body; and the live cells are selected from a class consisting of endothelial cells, smooth muscle cells, leukocytes, monocytes, polymorphonuclear leukocytes, lymphocytes, basophil, fibroblasts, stem cells, epithelial cells and eosinophil as is claimed(column 2 lines 38-63, column 3 lines 24-67, column 4 lines 3-6, column 5 lines 1-16 and lines 30-49 and figures 1-3).

### *Conclusion*

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Phan whose telephone number is 703-308-8969. The examiner can normally be reached on Monday-Friday from 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

Hieu Phan  
Examiner  
Art Unit 3738



April 8, 2002



**CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**